

The Honorable Ronald B. Leighton  
United States District Judge

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

LASHONN WHITE,

Plaintiff,

vs.

CITY OF TACOMA ET AL,

Defendants

No. 3:12-cv-05987-RBL

PLAINTIFF'S PROPOSED NON  
AGREED JURY INSTRUCTIONS -  
CITED

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PLAINTIFF'S PROPOSED NON AGREED  
JURY INSTRUCTIONS  
12-cv-05987-RBL

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	Capacity—Elements and Burden of Proof.			
33	Particular Rights-Fourth Amendment-Unreasonable Seizure of Person-Excessive (Deadly and nondeadly) force	NCPI 9.22	14	Plaintiff
40	Malicious Prosecution—Elements	<i>Hanson v. City of Snohomish</i> , 121 Wn.2d 552, 852 P.2d 295 (1993).	15	Plaintiff
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43	ADA-Physical or Mental Impairment	NCPI 12.2 (modified)	18	Plaintiff
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	Special Verdict		33-39	Plaintiff

1 PLAINTIFF'S PROPOSED JURY INSTRUCTION NO. 4

2 This is a civil case. Plaintiff Lashonn White brings the following claims:

- 3 1) § 1983 excessive force claim against Ryan Koskovich
- 4 2) § 1983 wrongful arrest claim against Ryan Koskovich
- 5 3) §1983 wrongful arrest claim against Michael Young;
- 6 4) § 1983 malicious prosecution claims against Michael Young;
- 7 5) state law malicious prosecution claims against Michael Young;
- 8 6) § 1983 claim against the City of Tacoma based on failure to train
- 9 regarding when to request a sign-language interpreter;
- 10 7) S 1983 claim against the City of Tacoma based on an alleged practice or
- 11 custom of denying deaf victims, suspects and witnesses an ASL interpreter;
- 12 8) State tort of Outrage against Ryan Koskovich;
- 13 9) State tort of Outrage against Michael Young;
- 14 10) Americans with Disabilities Act and Rehabilitation Act claims against
- 15 Pierce County;
- 16 11) Washington Law Against Discrimination claims against Pierce County;

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19 Ninth Circuit Pattern Instruction 1.2

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1 PLAINTIFF'S PROPOSED JURY INSTRUCTION NO. 24--DAMAGES -- PROOF

2 It is the duty of the Court to instruct you about the measure of damages. By  
3 instructing you on damages, the Court does not mean to suggest for which party your  
4 verdict should be rendered.

5 If you find for the plaintiff, you must determine the plaintiff's damages. The  
6 plaintiff has the burden of proving damages by a preponderance of the evidence.  
7 Damages means the amount of money that will reasonably and fairly compensate the  
8 plaintiff for any injury you find was caused by the defendant. You should consider the  
9 following:

10 The nature and extent of the injuries;  
11 The loss of enjoyment of life experienced;  
12 The mental, physical, and emotional pain and suffering experienced;  
13 The reasonable value of necessary medical care, treatment, and services  
14 received to the present time;

15 It is for you to determine what damages, if any, have been proved.

16 Your award must be based upon evidence and not upon speculation, guesswork  
17 or conjecture.

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20 Ninth Circuit Pattern Instruction 5.1  
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1 PLAINTIFF'S PROPOSED JURY INSTRUCTION NO. 25--NOMINAL DAMAGES

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3 The law which applies to this case authorizes an award of nominal damages. If you find  
4 for the plaintiff but you find that the plaintiff has failed to prove damages as defined in these  
5 instructions, you must award nominal damages. Nominal damages may not exceed one dollar.  
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8 Ninth Circuit Model Instruction 5.6  
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PLAINTIFF'S PROPOSED JURY INSTRUCTION NO. 28

In order to prevail on her § 1983 claim against defendant City of Tacoma alleging liability based on an official policy, practice, or custom, the plaintiff must prove each of the following elements by a preponderance of the evidence:

1. Officers Ryan Koskovich or Michael Young acted under color of law;
2. the acts of Ryan Koskovich and/or Michael Young deprived the plaintiff of her particular rights under the laws of the United States or the United States Constitution as explained in later instructions; and
3. Ryan Koskovich and/or Michael Young acted pursuant to an expressly adopted official policy or a longstanding practice or custom of the defendant.

A person acts "under color of law" when the person acts or purports to act in the performance of official duties under any state, county, or municipal law, ordinance, or regulation.

The parties have stipulated that Ryan Koskovich and Michael Young acted under color of law.

"Official policy" means a rule or regulation promulgated, adopted, or ratified by the defendant City of Tacoma.

"Practice or custom" means any permanent, widespread, well-settled practice or custom that constitutes a standard operating procedure of the defendant City of Tacoma.

If you find the plaintiff has proved each of these elements, and if you find that the plaintiff has proved all the elements she is required to prove under Instruction \_\_\_\_, your verdict should be for the plaintiff. If, on the other hand, the plaintiff has failed to prove any one or more of these elements, your verdict should be for the defendant.

1 NCPI 9.4 SECTION 1983 CLAIM AGAINST LOCAL GOVERNING BODY  
2 DEFENDANTS BASED ON OFFICIAL POLICY, PRACTICE, OR CUSTOM—  
3 ELEMENTS AND BURDEN OF PROOF  
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PLAINTIFF'S PROPOSED JURY INSTRUCTION NO. 29

In order to prevail on her § 1983 claim against defendant City of Tacoma alleging liability based on a policy of failure to train its police officers employees, the plaintiff must prove each of the following elements by a preponderance of the evidence:

1. the acts of Ryan Koskovich and/or Michael Young deprived the plaintiff of her particular rights under the laws of the United States or the United States Constitution as explained in later instructions;

2. Ryan Koskovich and/or Michael Young acted under color of law;

3. the training policies of the defendant City of Tacoma were not adequate to train its police officers to handle the usual and recurring situations with which they must deal;

4. the defendant City of Tacoma was deliberately indifferent to the obvious consequences of its failure to train its [police officers] [employees] adequately;  
and

5. the failure of the defendant City of Tacoma to provide adequate training caused the deprivation of the plaintiff's rights by Ryan Koskovich and/or Michael Young that is, the defendant's failure to train is so closely related to the deprivation of the plaintiff's rights as to be the moving force that caused the ultimate injury.

A person acts "under color of law" when the person acts or purports to act in the performance of official duties under any state, county, or municipal law, ordinance, or regulation. The parties have stipulated that the defendant's employee acted under color of law.

"Deliberate indifference" is the conscious choice to disregard the consequences of one's acts or omissions. The plaintiff may prove deliberate indifference in this case by



1 showing that the defendant City of Tacoma knew its failure to train adequately made it  
2 highly predictable that its employees would engage in conduct that would deprive  
3 persons such as the plaintiff of her rights.

4 If you find the plaintiff has proved each of these elements, and if you find that the  
5 plaintiff has proved all the elements she is required to prove under Instruction \_\_\_\_, your  
6 verdict should be for the plaintiff. If, on the other hand, the plaintiff has failed to prove  
7 any one or more of these elements, your verdict should be for the defendant.

8 NCPI 9.7 SECTION 1983 CLAIM AGAINST LOCAL GOVERNING BODY  
9 DEFENDANTS BASED ON POLICY OF FAILURE TO TRAIN—ELEMENTS AND  
10 BURDEN OF PROOF  
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PLAINTIFF'S PROPOSED JURY INSTRUCTION NO. 30

As previously explained, the plaintiff has the burden to prove that the acts of the defendants Ryan Koskovich and/or Michael Young deprived the plaintiff of particular rights under the United States Constitution. In this case, the plaintiff alleges the defendant deprived her of her rights under the Fourth Amendment to the Constitution when the deployed a taser at her and/or when they took her into custody.

Under the Fourth Amendment, a person has the right to be free from an unreasonable seizure of her person. In order to prove the defendants deprived the plaintiff of this Fourth Amendment right, the plaintiff must prove the following additional elements by a preponderance of the evidence:

1. Ryan Koskovich and/or Michael Young seized the plaintiff's person;
2. in seizing the plaintiff's person, Ryan Koskovich and/or Michael Young acted intentionally; and
3. the seizure was unreasonable.

A defendant "seizes" the plaintiff's person when she restrains the plaintiff's liberty by physical force or a show of authority. A person's liberty is restrained when, under all of the circumstances, a reasonable person would not have felt free to ignore the presence of law enforcement officers and to go about her business.

In determining whether a reasonable person in the plaintiff's position would have felt free to leave, consider all of the circumstances, including

1. the number of officers present;
2. whether weapons were displayed;
3. whether the encounter occurred in a public or nonpublic setting;

1 4. whether the officer's manner would imply that compliance would be compelled;  
2 and

3 5. whether the officers advised the plaintiff that she was free to leave.

4 A person acts "intentionally" when the person acts with a conscious objective to  
5 engage in particular conduct. Thus, the plaintiff must prove the defendant meant to  
6 engage in the acts that caused a seizure of the plaintiff's person. Although the plaintiff  
7 does not need to prove the defendant intended to violate the plaintiff's Fourth  
8 Amendment rights, it is not enough if the plaintiff only proves the defendant acted  
9 negligently, accidentally or inadvertently in conducting the search.

10 Here, the parties have stipulated that plaintiff was seized by the actions of the  
11 defendants Ryan Koskovich and Michael Young.

12 NCPI 9.18 PARTICULAR RIGHTS—FOURTH AMENDMENT—  
13 UNREASONABLE SEIZURE OF PERSON—GENERALLY  
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2 PLAINTIFF'S PROPOSED JURY INSTRUCTION NO. 31

3 In general, a seizure of a person by arrest without a warrant is reasonable if the  
4 arresting officers had probable cause to believe the plaintiff has committed or was  
5 committing a crime.

6 In order to prove the seizure in this case was unreasonable, the plaintiff must  
7 prove by a preponderance of the evidence that she was arrested without probable  
8 cause.

9 "Probable cause" exists when, under all of the circumstances known to the  
10 officer(s) at the time, an objectively reasonable police officer would conclude there is a  
11 fair probability that the plaintiff has committed or was committing a crime.

12 When police are determining whether they can place a suspect under arrest, they  
13 cannot disregard facts that they learn on the scene that tend to dissipate probable  
14 cause. Even if officers initially have probable cause to justify an arrest, it is illegal to  
15 execute or continue an arrest when additional information is obtained at the scene that  
16 indicates that there is less than a fair probability that the defendant had committed a  
17 crime.

18 Under state law, it is a crime to assault a police officer or to intentionally obstruct  
19 a police officer in the discharge of his duties.

20 NCPI 9.20 PARTICULAR RIGHTS—FOURTH AMENDMENT—UNREASONABLE  
21 SEIZURE OF PERSON—PROBABLE CAUSE ARREST [as modified based on United  
22 States v. Ortiz-Hernandez, 427 F.3d 567, 574 (9th Cir. 2005). United States v. Lopez,  
23 482 F.3d 1067 (9th Cir. 2007).]  
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1 PLAINTIFF'S PROPOSED JURY INSTRUCTION NO. 32

2 Plaintiff brings a § 1983 claim against defendants Koskovich and/or Young. In  
3 order to prevail on her § 1983 claim against defendant Koskovich or Young, the plaintiff  
4 must prove each of the following elements by a preponderance of the evidence:

- 5 1. the defendant Koskovich and/or Young acted under color of law; and  
6 2. the act or failure to act of the defendant Koskovich or Young deprived the plaintiff  
7 of her particular rights under the United States Constitution as explained in later  
8 instructions.

9 A person acts "under color of law" when the person acts or purports to act in the  
10 performance of official duties under any state, county, or municipal law, ordinance, or  
11 regulation. I instruct you that the defendant acted under color of law.

12 If you find the plaintiff has proved each of these elements, and if you find that the  
13 plaintiff has proved all the elements she is required to prove under Instruction \_\_\_\_ [NCPI  
14 9.22], your verdict should be for the plaintiff. If, on the other hand, the plaintiff has failed  
15 to prove any one or more of these elements, your verdict should be for the defendant(s).

16 SECTION 1983 -- CLAIM AGAINST DEFENDANT IN INDIVIDUAL CAPACITY--  
17 ELEMENTS AND BURDEN OF PROOF. Ninth Circuit Pattern Instruction 9.2  
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1 PLAINTIFF'S PROPOSED JURY INSTRUCTION NO. 33

2 In general, a seizure of a person is unreasonable under the Fourth Amendment if  
3 a police officer uses excessive force in making a lawful arrest. Thus, in order to prove  
4 an unreasonable seizure in this case, the plaintiff must prove by a preponderance of the  
5 evidence that defendant Koskovich used excessive force during the arrest of the  
6 plaintiff.

7 Under the Fourth Amendment, a police officer may only use such force as is  
8 "objectively reasonable" under all of the circumstances. In other words, you must judge  
9 the reasonableness of a particular use of force from the perspective of a reasonable  
10 officer on the scene and not with the 20/20 vision of hindsight.

11 In determining whether the officer used excessive force in this case, consider all of the  
12 circumstances known to the officer on the scene, including:

- 13 1. The severity of the crime or other circumstances to which the officer was responding;
- 14 2. Whether the plaintiff posed an immediate threat to the safety of the officer or to  
15 others;
- 16 3. Whether the plaintiff was actively resisting arrest or attempting to evade arrest by  
17 flight;
- 18 4. The amount of time and any changing circumstances during which the officer had to  
19 determine the type and amount of force that appeared to be necessary;
- 20 5. The type and amount of force used;
- 21 6. The availability of alternative methods to take the plaintiff into custody.

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23 NCPI 9.22 PARTICULAR RIGHTS—FOURTH AMENDMENT—  
24 UNREASONABLE SEIZURE OF PERSON—EXCESSIVE (DEADLY AND  
NONDEADLY) FORCE

PLAINTIFF'S PROPOSED JURY INSTRUCTION NO. 40 Malicious Prosecution--  
Elements

In Count \_\_\_\_, Plaintiff brings a claim of malicious prosecution under state law. In order to prevail on his claim, Plaintiff must prove each of the following elements by a preponderance of the evidence:

- 1) that the prosecution claimed to have been malicious was instituted or continued by the defendant;
- 2) that there was want of probable cause for the institution or continuation of the prosecution;
- 3) that the proceedings were instituted or continued through malice;
- 4) that the proceedings terminated on the merits in favor of the plaintiff, or were abandoned; and
- 5) that the plaintiff suffered injury or damage as a result of the prosecution.

If you find from your consideration of all the evidence that each of these propositions has been proved, your verdict should be for the plaintiff on the malicious prosecution claim. On the other hand, if you find that any of these propositions has not been proved, your verdict should be for the defendant on this claim.

*Hanson v. City of Snohomish*, 121 Wn.2d 552, 852 P.2d 295 (Wash. 1993).

1 PLAINTIFF'S PROPOSED JURY INSTRUCTION NO. 41 Federal Malicious  
 2 Prosecution--Elements

3 In Count \_\_\_\_, Plaintiff brings a claim of malicious prosecution under federal law.  
 4 In order to prevail on her claim, Plaintiff must prove each of the following elements by a  
 5 preponderance of the evidence:

- 6 1) that the prosecution claimed to have been malicious was instituted or  
 7 continued by the defendant;  
 8 2) that there was want of probable cause for the institution or continuation of the  
 9 prosecution;  
 10 3) that the proceedings were instituted or continued through malice;  
 11 4) that the proceedings terminated on the merits in favor of the plaintiff, or were  
 12 abandoned; and  
 13 5) that the plaintiff suffered injury or damage as a result of the prosecution.  
 14 6) That the defendant's actions were for the purpose of denying the plaintiff equal  
 15 protection or another specific constitutional right as described in Instruction Nos  
 16 \_\_\_\_\_.

17 If you find from your consideration of all the evidence that each of these  
 18 propositions has been proved, your verdict should be for the plaintiff on the malicious  
 19 prosecution claim. On the other hand, if you find that any of these propositions has not  
 20 been proved, your verdict should be for the defendant on this claim.

21 Freeman v. City of Santa Ana, 68 F.3d 1180, 1189 (9th Cir.1995); *Hanson v. City*  
 22 *of Snohomish*, 121 Wn.2d 552, 852 P.2d 295 (Wash. 1993); Lacey v. Maricopa County,  
 23 649 F.3d 1118 (9th Cir. 2011).  
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PLAINTIFF'S PROPOSED JURY INSTRUCTION NO. 42 – Malice -- Definition

In a malicious prosecution context, the term “malice” has a more general meaning than it does in ordinary parlance. A plaintiff can prove malice by showing that the prosecution was commenced for improper or wrongful motives or in reckless disregard of the plaintiff's rights. Malice may be inferred from lack of probable cause.

*Bender v. City of Seattle*, 99 Wn.2d 582, 593-94 664 P.2d 492, 500 (1983).

PLAINTIFF'S PROPOSED JURY INSTRUCTION NO. 43

As you have been instructed, the first element of the ADA claim that the plaintiff must prove is that the plaintiff has a recognized disability under the ADA. A "disability" under the ADA is a physical impairment being regarded as having a physical or mental impairment that substantially limits one or more of the major life activities of such individual.

The terms disability and physical or mental impairment include (1) any physiological disorder, or condition, or anatomical loss affecting one or more of the following body systems:

special sense organs, respiratory (including speech organs); reproductive, digestive, genito-urinary.

Major life activities are the normal activities of living which a non-disabled person can do with little or no difficulty, such as caring for oneself, performing manual tasks, walking, sleeping, seeing, hearing, speaking, breathing, learning, engaging in sexual relations, reproducing, interacting with others, and working.

A limitation is substantial if the disabled person is unable to perform the activity or is significantly restricted in doing so.

Factors to consider in deciding whether a major life activity is substantially limited include:

- (1) the nature and severity of the impairment;
- (2) the duration or expected duration of the impairment; and
- (3) the permanent or long-term impact of the impairment.

NCPI 12.2 ADA—PHYSICAL OR MENTAL IMPAIRMENT (modified)

PLAINTIFF'S PROPOSED JURY INSTRUCTION NO. No. 44

To establish the defendant's duty to provide a reasonable accommodation, the plaintiff must prove, by a preponderance of the evidence, both of the following elements:

1. the plaintiff requested of the defendant an accommodation due to a disability;

or

1. the defendant knew, or had reason to know that:

(a) the plaintiff has a disability;

(b) the plaintiff was experiencing problems because of the disability; and

(c) the disability prevented the plaintiff from requesting a reasonable accommodation.

and

2. the defendant could have made a reasonable accommodation that would have enabled the plaintiff to benefit from the services of the jail.

It is for you to determine whether the accommodation requested by the plaintiff is reasonable.

A reasonable accommodation does not include changing or eliminating any essential function of the jail, shifting any of the essential functions of the subject employment to others, or creating a new position for the disabled employee.

**NCPI 12.8 ADA—REASONABLE ACCOMMODATION [modified]**

1 PLAINTIFFS' PROPOSED JURY INSTRUCTION NO. 45 ("Discrimination"  
2 Defined)

3 To prove discrimination under the ADA or RA, plaintiff must prove that the  
4 County failed to provide her the opportunity to participate in the same programs,  
5 benefits or services of its jail that hearing people are able to, and to be able to  
6 participate to the same extent that hearing people are able to. In order to provide deaf  
7 persons with the opportunity to participate in its programs, benefits or services, the  
8 County was required to do all of the following:

9 1. Provide "effective communication" between deaf people and its employees  
10 and agents;

11 2. Provide "auxiliary aids and services" where necessary to ensure effective  
12 communication;

13 3. Provide information concerning the existence and location of accessible  
14 services and activities as well as "notice" to the deaf person regarding her rights under  
15 the ADA and RA; and

16 4. Provide reasonable accommodations where necessary to ensure effective  
17 communication and otherwise to avoid discrimination.

18 28 CFR §§35.130(b)(1)(i)-(iii) (vii); 28 C.F.R. §§ 41.51(b)(1)(i)-(iii), (vii); 28 C.F.R.  
19 §35.160; 28 C.F.R. 35.106, 35.163(a); 28 C.F.R. §35.130(b)(7).

1 PLAINTIFFS' PROPOSED JURY INSTRUCTION NO. 46 (Effective  
2 Communication)

3 In order to provide deaf persons the opportunity to participate in the County's  
4 programs, benefits and services, the County must ensure that its employees and agents  
5 have "effective communication" with deaf people. That means that the County must  
6 ensure that deaf people can communicate with its employees and agents in a manner  
7 that is as effective as the communication that they have with people who are not deaf.  
8 For example, the County must ensure that deaf people who are arrested and taken into  
9 the care and custody of the County receive the same quality of communication that the  
10 County provides to people who are not deaf and are taken into their care and custody.

11 The type of actions that the County was required to take to ensure effective  
12 communication depends on several factors, including:

- 13 1. the method of communication preferred by the deaf person;  
14 2. the nature, length, and complexity of the communication involved; and/or  
15 3. the context in which the communication is taking place.

16 If you find that the County did not provide effective communication to the Plaintiff,  
17 then you must find that the County violated the ADA and RA with respect to that  
18 Plaintiff.

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20 28 C.F.R. §35.160(a)(1); 28 C.F.R. § 41.51(e); 28 C.F.R. §35.160(b)(2).  
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1 PLAINTIFFS' PROPOSED JURY INSTRUCTION NO. 47

2 (Auxiliary Aids and Services For Effective Communication)

3 The ADA and RA require that the County must provide auxiliary aids and  
 4 services to deaf people if it is necessary to ensure effective communication. The  
 5 services necessary to ensure effective communication may include, but are not limited  
 6 to, providing qualified sign language interpreters, providing TTYs (phone systems that  
 7 can be used by deaf people), and close- captioned televisions.

8 In determining what the County was required to do to provide effective  
 9 communication, the County was required to give primary consideration to the  
 10 preferences of the deaf people involved, that is, to the preferences of LaShonn White.

11 The County must also provide an opportunity for deaf people to request the type  
 12 of communications methods that they prefer. The County must honor that preference  
 13 unless it can show that another effective means of communication exists or that use of  
 14 the means chosen would constitute an "undue burden." If the County attempts to use a  
 15 different means of communication than that preferred by the deaf person, the County  
 16 has the burden of proving that its method is as effective as the method preferred by the  
 17 deaf person.

18 While exchanging notes is one possible method of communication, sign  
 19 language interpreters may be required when a deaf person's primary language is sign  
 20 language, and the information being communicated with the deaf person is complex, or  
 21 the discussion is lengthy. There are many situations where effective communication  
 22 between law enforcement and deaf people is critical, including interviewing deaf people,  
 23 engaging in a complex conversation, or assessing their classification or suicide risk. In  
 24 these situations, law enforcement must provide the deaf person a qualified sign

1 language interpreter when necessary to ensure effective communication. Similarly,  
 2 when a law enforcement officer is interviewing or engaging in any complex conversation  
 3 with a person whose primary language is sign language, a qualified interpreter is usually  
 4 needed to ensure effective communication.

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 7 28 C.F.R. § 35.104 (definition of “auxiliary aids and services.”)  
 8 28 C.F.R. § 35.160(b)(2); 28 C.F.R. § 35.160(b)(2); Guidance On ADA Regulation On  
 9 Nondiscrimination On The Basis Of Disability In State And Local Government Services  
 10 Originally Published July 26, 1991, 28 C.F.R. pt. 36, app. B (“The public entity shall  
 11 honor the choice [of auxiliary aid] unless it can demonstrate that another effective  
 12 means of communication exists or that use of the means chosen would not be required  
 13 under § 35.164.” (Emphasis added)); see also, e.g., Hayden v. Redwoods Community  
 14 College District, 2007 WL 61886, at \*9 (N.D. Cal. Jan. 8, 2007) (holding that where the  
 15 defendant proffered what it believed to be an alternative means of communication, it  
 16 was the defendant’s “burden . . . to demonstrate the proffered aid’s effectiveness”); Nat’l  
 17 Fed’n of the Blind v. Target, 452 F. Supp. 2d 946 (N.D. Cal. 2006) (holding that after the  
 18 plaintiffs had stated a claim by alleging that the defendant’s website was not accessible  
 19 to blind people, “the burden then shift[ed] to defendants to assert, as an affirmative  
 20 defense, that they already provide the information . . . in another reasonable format.”);  
 21 Center v. City of West Carrollton, 227 F. Supp. 2d 863, 868 (S.D. Ohio 2002) (quoting  
 22 Guidance language above, and holding that the ADA and RA “require that a public  
 23 entity must give deference to a disabled person's choice of auxiliary aid, unless it can  
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1 demonstrate that another effective means of communication exists, or that use of the  
2 means chosen would not be required under § 35.164.).

3 See also Chisolm v. McManimon, 275 F.3d 315, 319, 328-29 (3th Cir. 2001)  
4 (noting importance of interpreter during intake and classification.

5 U.S. Department of Justice, Communicating with People Who are Deaf or Hard  
6 of Hearing: ADA Guide for Law Enforcement Officers. Exhibit \_\_\_\_.



1 PLAINTIFFS' PROPOSED JURY INSTRUCTION NO. 48 (Qualified Interpreter)

2 If the service required or requested was the assistance of a sign language  
3 interpreter, then the County must provide a qualified sign language interpreter as  
4 defined in the following instruction. A "qualified interpreter" means an interpreter who,  
5 via a video remote interpreting (VRI) service or by personal appearance, is able to  
6 interpret effectively, accurately, and impartially, in conversations with a deaf person,  
7 using any necessary specialized vocabulary. Qualified interpreters include, for example,  
8 sign language interpreters.

9 Someone with only a rudimentary familiarity with sign language or finger spelling  
10 is not a "qualified interpreter."

11 28 C.F.R. § 35.104.  
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2 PLAINTIFFS' PROPOSED JURY INSTRUCTION NO. 49 (Notice)

3 The County was required to make information available to LaShonn White  
4 regarding her rights under the ADA and RA. The County was also required to ensure  
5 that LaShonn was able to obtain information as to the existence and location of  
6 accessible programs, services, and activities, including available services and  
7 accommodations, while they were in the care and custody, or being taken into the care  
8 and custody, of the County. In providing such information, the County was required to  
9 comply with the requirements for effective communication.

10 If you find that it is more likely than not that the County failed to provide the  
11 Plaintiff information concerning the requirements of the ADA and RA and the existence  
12 and location of accessible services, then you must find that the County violated the ADA  
13 and RA with respect to Plaintiff.

14 28 C.F.R. 35.10; 35.163(a)  
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1 PLAINTIFF’S PROPOSED JURY INSTRUCTION NO. 50

2 (Elements of Claims under Section 504 of the Rehabilitation Act and the ADA)

3 Plaintiff LaShonn White claims that the County of Pierce violated the Rehabilitation Act  
4 of 1973 which prohibits discrimination against persons with disabilities by entities that  
5 receive federal financial assistance. Plaintiff also claims that the City violated the  
6 Americans with Disabilities Act, or the “ADA,” which prohibits discrimination against  
7 people with disabilities by public entities such as cities.

8 The parties agree that at all times relevant to this case, the County of Pierce was  
9 required to follow the ADA and RA. Thus, the County and its employees and agents,  
10 including its jails and detention facilities, were also covered by the ADA and the RA.  
11 You must find in favor of Plaintiff under the ADA and RA if Plaintiff shows that:

- 12 1. she was disabled;
- 13 2. she was otherwise qualified to participate in the programs, services and  
14 activities; and,
- 15 3. the program discriminated against her because of his or her disability.

16 The parties agree that – because of her deafness – LaShonn White is  
17 disabled. That means the parties agree that Plaintiff satisfy the first ADA/RA  
18 requirement.

19  
20 **Basis:** 29 U.S.C. §794(a); 29 U.S.C. §794(b)(1); section 504 of the Rehabilitation  
21 Act.

22 Plaintiff has combined the instructions for section 504 of the Rehabilitation  
23 Act and the ADA. “Because the language of [Title II of the ADA and the Rehabilitation  
24 Act] is substantially the same, we apply the same analysis to both.” *Cohon ex rel. Bass*

1 *v. N.M. Dep't of Health*, 646 F.3d 717, 726 (10th Cir. 2011) (*quoting Doe v. Univ. of Md.*  
 2 *Med. Sys. Corp.*, 50 F.3d 1261, 1264 n.9 (4th Cir. 1995)). In addition, because the  
 3 coverage of both statutes (receiving federal funding; being a public entity) is not  
 4 disputed, we have not included that element in the list.

5 Under 9th Circuit caselaw, "[T]he public entity 'is required to undertake a  
 6 fact-specific investigation to determine what constitutes a reasonable accommodation.'  
 7 Section 504 and the ADA 'create a duty to gather sufficient information from the  
 8 [disabled individual] and qualified experts as needed to determine what  
 9 accommodations are necessary.'" *Id.*, citing *Wong v. Regents of University of California*,  
 10 192 F.3d 807, 818 (9th Cir.1999). Therefore, an entity does not 'act' by merely proffering  
 11 just any accommodation, especially when the accommodation is based on stereotypes  
 12 of the person's disability. *Id.* Rather, it must consider the individual's particular needs  
 13 when investigating what accommodations are reasonable." *D.A. v. Meridian Joint*  
 14 *School Dist. No. 2*, 289 F.R.D. 614, 623 (D. Idaho 2013); see also *Duvall v. County of*  
 15 *Kitsap* 260 F.3d 1124, 1139 (9th Cir. 2001); *City of Canton v. Harris*, 489 U.S. 378, 389,  
 16 109 S.Ct. 1197, 103 L.Ed.2d 412 (1989).

17 *Barber ex rel. Barber v. Colorado Department of Revenue*, 562 F.3d 1222,  
 18 1228 (10th Cir. 2009), provides the following elements of a prima facie case under  
 19 Section 504: "(1) plaintiff is handicapped under the Act; (2) [she] is 'otherwise qualified'  
 20 to participate in the program; (3) the program receives federal financial assistance; and  
 21 (4) the program discriminates against plaintiff." Citation omitted.

22 *Robertson v. Las Animas County Sheriff's Department*, 500 F.3d 1185,  
 23 1193 (10th Cir.  
 24

1           2007), provides the following elements under Title II: “(1) [the plaintiff] is a  
2           qualified individual with a disability, (2) who was excluded from participation in or denied  
3           the benefits of a public entity’s services, programs, or activities, and (3) such exclusion,  
4           denial of benefits, or discrimination was by reason of a disability.”

1  
2 PLAINTIFFS' PROPOSED JURY INSTRUCTION NO. 51 (Accommodations in the  
3 Courtroom)

4 During this trial, there may often be sign language interpreters present in the  
5 court room. These individuals will assist this Court with the testimony of the witnesses  
6 who are deaf and who will be communicating using American Sign Language, also  
7 known as "ASL". The procedure for such a witness is that the attorney will ask the  
8 witness a question, the question will then be translated into ASL by the interpreter for  
9 the witness, the witness will testify in ASL, and the interpreter will then inform the jury  
10 and court what that witness has said. The interpreter is required to remain neutral. The  
11 interpreter is required to translate between English and ASL accurately and impartially  
12 to the best of the interpreter's skill and judgment. You may notice that the witness who  
13 is deaf may also communicate using what appears to be exaggerated facial expressions  
14 or hand gestures. This is a necessary part of American Sign Language. Grammar is  
15 conveyed through these facial expressions and gestures. You should not place any  
16 negative implications on these expressions or gestures, even if they appear to be  
17 exaggerated or unusual to persons who do not communicate using ASL. When there is  
18 an interpreter, the process of taking testimony is a bit different. An interpreter must  
19 listen to the entire question, before beginning to interpret to ensure that the entire  
20 question is interpreted accurately. American Sign Language (ASL) is very different from  
21 English. Often, there are not ASL signs for English words, and no English word for an  
22 ASL sign, so the entire question must be interpreted as a whole. The process is  
23 reversed for answers. You must evaluate interpreted witness testimony as you would  
24 any other testimony. That is, you must not give interpreted testimony any greater or

1 lesser weight than you would if the witness had spoken English. You must not make any  
2 assumptions that a witness is less credible because that witness relies on the  
3 assistance of an interpreter to communicate.  
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PLAINTIFFS' PROPOSED JURY INSTRUCTION NO. 52

In order to prevail on her WLAD claim against Pierce County, the plaintiff must prove the following elements:

(1) the plaintiff is disabled;

(2) the jail is a place of public accommodation;

(3) plaintiff was not provided services comparable to those provided nondisabled persons by or at the jail; and

(4) the disability was a substantial factor causing the discrimination.

If you find from your consideration of all the evidence that each of these propositions has been proved, your verdict should be for the plaintiff on the WLAD claim. On the other hand, if you find that any of these propositions has not been proved, your verdict should be for the defendant on this claim.

Fell v. Spokane Transit Auth., 128 Wn.2d 618, 637, 911 P.2d 1319 (1996).



**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA**

**LASHONN WHITE,**

**Plaintiff,**

**vs.**

**RYAN KOSKOVICH, MICHAEL YOUNG,**

**CITY OF TACOMA, PIERCE COUNTY**

**Defendants**

**No. 3:12-cv-05987-RBL**

**SPECIAL VERDICT**

WE THE JURY, answer the following questions submitted by the Court as follows:

A. Section 1983 (CIVIL RIGHTS) CLAIMS AGAINST INDIVIDUAL OFFICERS

**QUESTION NO. 1**

Do you find for the plaintiff, LaShonn White, on her claim that Officer Ryan Koskovich violated her constitutional right to be free from excessive force?

Answer: Yes \_\_\_\_\_ No \_\_\_\_\_

**QUESTION NO. 2**

1 Do you find for the plaintiff, LaShonn White, on her claim that Officer Ryan  
2 Koskovich violated her constitutional right to be free from wrongful arrest.

3 Answer: Yes \_\_\_\_\_ No \_\_\_\_\_

4  
5 QUESTION NO. 3

6 Do you find for the plaintiff, LaShonn White, on her claim that Officer Michael  
7 Young violated her constitutional right to be free from wrongful arrest?

8 Answer: Yes \_\_\_\_\_ No \_\_\_\_\_

9  
10 QUESTION NO. 4

11 Do you find for the plaintiff, LaShonn White, on her claim that Officer Michael  
12 Young maliciously prosecuted her with the intent to violate her constitutional rights as  
13 described in the instructions?

14 Answer: Yes \_\_\_\_\_ No \_\_\_\_\_

15  
16 B. Section 1983 (CIVIL RIGHTS) CLAIMS AGAINST GOVERNMENT ENTITIES

17  
18 QUESTION NO. 5

19 Do you find for the plaintiff, LaShonn White, on her claim that her constitutional  
20 rights were violated because the City of Tacoma failed to train its officers regarding  
21 when and/or how to request a sign-language interpreter?

22 Answer: Yes \_\_\_\_\_ No \_\_\_\_\_

23  
24 QUESTION NO. 6

1 Do you find for the plaintiff, LaShonn White, on her claim that her constitutional  
2 rights were violated because the City of Tacoma had a practice or custom of denying  
3 Deaf victims, suspects, and witnesses a sign-language interpreter?

4 Answer: Yes \_\_\_\_\_ No \_\_\_\_\_  
5

6 C. STATE LAW (MALICIOUS PROSECUTION AND OUTRAGE) CLAIMS

7 QUESTION NO. 7

8 Do you find for the plaintiff, LaShonn White, on her state law claim that Officer  
9 Michael Young maliciously prosecuted her?

10 Answer: Yes \_\_\_\_\_ No \_\_\_\_\_  
11

12 QUESTION NO. 8

13 Do you find for the plaintiff, LaShonn White, on her claim that Officer Ryan  
14 Koskovich committed the tort of outrage against her?

15 Answer: Yes \_\_\_\_\_ No \_\_\_\_\_  
16

17 QUESTION NO. 9

18 Do you find for the plaintiff, LaShonn White, on her claim that Officer Michael  
19 Young committed the tort of outrage against her?

20 Answer: Yes \_\_\_\_\_ No \_\_\_\_\_  
21

22 D. AMERICANS WITH DISABILITIES AND REHABILITATION ACT CLAIMS

23 QUESTION NO. 10  
24

1 Do you find for the plaintiff, LaShonn White, on her claim that Pierce County  
2 violated her rights under the Americans with Disabilities Act and the Rehabilitation Act?

3 Answer: Yes \_\_\_\_\_ No \_\_\_\_\_  
4

5 E. WASHINGTON LAW AGAINST DISCRIMINATION (WLAD) CLAIMS

6 QUESTION NO. 11

7 Do you find for the plaintiff, LaShonn White, on her claim that Pierce County  
8 violated her rights under the Washington Law Against Discrimination?

9 Answer: Yes \_\_\_\_\_ No \_\_\_\_\_  
10

11 F. DAMAGES  
12

13 QUESTION NO. 12

14 If you answered yes to question 1, 2, 3, 4, 5, or 6, what is the total amount of  
15 damages that would reasonably compensate LaShonn White for her pain and suffering  
16 and emotional distress for those questions?

17 Answer \_\_\_\_\_  
18

19 If you have found that plaintiff did not prove any amount of compensatory  
20 damages, but you answered "Yes" to Questions 1, 2, 3, 4, 5, or 6, you must award  
21 nominal damages of no more than \$1.00.

22 Nominal Damages \_\_\_\_\_  
23

24 QUESTION NO. 13

1 If you answered yes to question 7, 8, or 9, what is the total amount of damages  
2 that would reasonably compensate LaShonn White for her pain and suffering and  
3 emotional distress for those questions?

4 Answer \_\_\_\_\_  
5

6 QUESTION NO. 14

7 If you answered yes to question 10, what is the total amount of damages that  
8 would reasonably compensate LaShonn White for her pain and suffering and emotional  
9 distress for that question?

10 Answer \_\_\_\_\_  
11

12 If you have found that plaintiff did not prove any amount of compensatory  
13 damages, but you answered "Yes" to Question 10 you must award nominal damages of  
14 no more than \$1.00.

15 Nominal Damages \_\_\_\_\_  
16

17 QUESTION NO. 15

18 If you answered yes to question 11, what is the total amount of damages that  
19 would reasonably compensate LaShonn White for her pain and suffering and emotional  
20 distress for that question?

21 Answer \_\_\_\_\_  
22  
23  
24

1 If you have found that plaintiff did not prove any amount of compensatory  
2 damages, but you answered "Yes" to Question 11 you must award nominal damages of  
3 no more than \$1.00.

4 Nominal Damages \_\_\_\_\_  
5

6 QUESTION NO. 16

7 If you answered yes to either or both of questions 1 or 2, do you find that plaintiff  
8 LaShonn White is entitled to punitive damages for the conduct of Officer Koskovich?

9 Answer: Yes \_\_\_\_\_ No \_\_\_\_\_

10 If you answered yes to question 16, then please proceed to question 17,  
11 otherwise proceed to question 18.  
12

13 QUESTION NO. 17

14 If you answered yes to question 16, then how much is plaintiff LaShonn White  
15 entitled to for punitive damages for the actions of Officer Koskovich?

16 Answer \_\_\_\_\_  
17

18 QUESTION NO. 18

19 If you answered yes to either or both of questions 3 or 4, do you find that plaintiff  
20 LaShonn White is entitled to punitive damages for the conduct of Officer Young?

21 Answer: Yes \_\_\_\_\_ No \_\_\_\_\_

22 If you answered yes to question 18, then please proceed to question 19,  
23 otherwise please proceed to sign and date the verdict.  
24

1 QUESTION NO. 19

2 If you answered yes to question 18, then how much is plaintiff LaShonn White  
3 entitled to for punitive damages for the actions of Officer Young?

4 Answer \_\_\_\_\_

5  
6 PLEASE SIGN AND DATE THE VERDICT

7  
8  
9 DATED THIS \_\_\_\_ day of \_\_\_\_\_, 2014.

10 \_\_\_\_\_  
11 PRESIDING JUROR  
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